

23 can't tell you what date I discussed it with

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1 him.

2 Q Has Mr. Breen ever told you anything
3 about that meeting that is inconsistent with the
4 information reflected on your notes that are
5 your Deposition Exhibit No. 9?

6 A No, he's never told me anything
7 inconsistent with that. He told me that she
8 came in for her paycheck. She spoke to him
9 briefly. And these notes indicate that she was
10 concerned about Terry's representations to the
11 FCC, which representations Quentin knew were no
12 longer being maintained by PCS 2000.

13 Q And when did Mr. Breen know that they
14 were no longer being maintained by PCS 2000?

15 A As of January 24th.

16 Q And when had that been conveyed to the
17 FCC?

18 A At a minimum, it was conveyed in
19 writing on the 26th. It may well have been
20 conveyed informally by telephone earlier. I
21 don't know for certain.

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5 THE WITNESS:.....

* * * * *

15 In the paragraph no. 12 of Exhibit 10,

16 which is my response to Mr. Gutierrez, with
17 respect to Breen, that paragraph says, "Mr.
18 Sullivan recalls that Mr. Breen took the
19 report's conclusions seriously, but found
20 certain of its characterizations as they
21 pertained to him to be amusing. While Mr. Breen
22 did not recall the details of his conversation
23 with Ms. Hamilton clearly, he acknowledged to

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1 Mr. Sullivan that his comment about 'Terry being
2 Terry' had most likely been in regard to Mr.
3 Easton's initial defensive reaction to the
4 bidding error, maintaining that it must have
5 been the FCC's fault, a position Mr. Easton no
6 longer maintained by the date of Mr. Breen's
7 conversation with Ms. Hamilton."

8 MR. CARROCCIO: Thank you. Let's go
9 off the record for a moment.

10 (Off the record.)

11 BY MR. CARROCCIO:

12 Q Mr. Sullivan, could you go to your
13 deposition Exhibit No. 5, please.

14 A Uh-huh. (Nodding affirmatively.) No.
15 5? Okay. Yes?

16 Q The message on that redraft of waiver
17 request, after parenthetical (a), it indicates

18 that one of the purposes of filing quickly is to
19 "reassure the FCC..."

20 A Yes.

21 Q Reassure the FCC of what?

22 A I believe that indicates that we had
23 had some contact with the FCC and had told them

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1 that we were not blaming the FCC for the bidding
2 error, and that we were accepting blame, and
3 that this was intended to get that in more
4 formal form, written form, as soon as possible.

5 Q Okay. So at that time, on the 25th, at
6 least, there was no longer any intention to
7 blame the FCC, and that was well known to Mr.
8 Lamoso and to Mr. Martinez, Mr. Easton and Mr.
9 Breen?

10 A Yes.

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19 Q The following day on the 24th, when you
20 made the recommendation that PCS 2000 not blame
21 the FCC, what was Mr. Easton's reaction to that
22 recommendation?

23 A Well, my recommendation that we not

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1 blame the FCC was on the evening of the 23rd,
2 after the conversation with the FCC staff. In
3 light of the fact that the staff told me that

4 the bid had been posted as it had been received,
5 and in light of the fact that we had no evidence
6 to the contrary, we had speculation only, it was
7 perfectly obvious that given what the staff
8 believed to be the case and in the absence of
9 any countervailing evidence, that would not be a
10 fruitful route to pursue.

11 There was certainly the possibility
12 that the error could have occurred as a result
13 of human error. And by the next morning, on the
14 24th, Mr. Easton agreed that it must have
15 occurred either through him or through Cynthia
16 Hamilton, who had been operating the terminal.
17 And so at that point, the strategy of not
18 blaming the FCC and accepting blame on the part
19 of PCS 2000 or its bidding agents, seemed to be
20 the only viable strategy. And everybody
21 concurred in that.

22 Q And that was, to your recollection, Mr.
23 Easton's initial reaction as well?

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1 A His initial reaction to?

2 Q To the recommendation that the FCC not
3 be blamed.

4 A Yes.

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3 Q You stated to one of Mr. Carroccio's

4 questions that one purpose of -- you wanted to
5 get the waiver request filed quickly was to
6 reassure the FCC. And you believed that the FCC
7 may have already been told prior to that point
8 that the applicant was no longer blaming the FCC
9 for the bidding error; correct?

10 A Yes.

11 Q Do you know if there ever was any
12 retraction made regarding the materials sent to
13 the FCC prior to the filing of the waiver
14 request?

15 A I don't know. I think the telephone
16 conversation that I had -- one or the other of
17 the telephone conversations that I had with the
18 FCC on the 23rd of January attempted to describe
19 what those documents were. And the FCC
20 officials that I was speaking to -- I'm not sure
21 whether this was Ms. McNeil or in the subsequent
22 call with Ms. Ham -- seemed to indicate that
23 they knew that there had been changes, but I

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1 assumed that this had been from their
2 conversation from Terry -- with Terry -- between
3 Mr. Segalos and Terry Easton. In hindsight, it
4 appears that it may have also been informed by
5 conversations or information from Ms. Hamilton.

6 Q Were you ever instructed to tell the

7 FCC not to rely on the materials that Mr. Easton
8 had faxed?

9 A Not until I got the Hamilton statement,
10 after which we contacted the FCC and began the
11 independent counsel process. In the waiver
12 request, Mr. Easton's declaration indicated that
13 the materials that had been faxed to the FCC
14 reflected changes that had been made after the
15 bidding session in order to update it to show
16 the deletions of the markets.

17 So, to the best of my knowledge at that
18 point, there was no reason to further correct
19 what had been filed with the FCC.

20 Q And the date you received the Hamilton
21 declaration, was that February 5th?

22 A Yes.

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16 Q Okay. Mr. Sullivan, you indicated that
17 in conversations with the FCC, you got the
18 impression they knew that there had been changes
19 to the bidding documents or the bid materials
20 that Mr. Easton had sent to them?

21 A Yes. I indicated to them that this was
22 not the actual information transmitted to the
23 FCC, that it reflected some changes made to

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1 conform to the on line bidding, and they said

2 something to the effect of, "Yes, we know that
3 there have been changes," or something like
4 that. I'm not sure exactly where the
5 conversation went. I didn't take notes on that
6 conversation. I didn't seem like anything all
7 that important, given that Terry had previously
8 spoken to them. In hindsight, it seems more
9 important.

10 Q But is it your distinct recollection
11 that you discussed with the FCC and the FCC
12 acknowledged that the documents transmitted to
13 them by Mr. Easton on the 23rd and subsequently
14 by you on the same date were, in fact, not the
15 precise computer file transmitted to the FCC's
16 bidding operation?

17 A To the best of my recollection, I
18 informed the FCC of that fact, and the FCC staff
19 acknowledged that. I cannot state with great
20 precision exactly what I said. It may well have
21 been misunderstood, for all I know.

22 I would like to add one additional
23 factor to that, and that is that the -- Well,

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1 I'll just let it stand.

2 Q Mr. Sullivan, were you privy to any
3 recording or transcript of recording of Mr.
4 Easton's conversation with the FCC on the 23rd

5 at the time you prepared the waiver request?

6 A No, I was not.

7 Q And you were not privy to it at any
8 time prior to preparing the waiver request?

9 A No, I was not.

10 Q So your understanding of that
11 conversation was only that which Mr. Easton had
12 relayed to you as his own recollection of that
13 conversation?

14 A Yes. And he was in a bit of a frenzied
15 state, so it was difficult to tell what he had
16 told the FCC and what he was telling me for the
17 first time.

18 Q You were asked if PCS 2000 had
19 retracted materials prior to filing the waiver
20 request. I believe you responded that there had
21 been no reason to do that; is that correct?

22 A Yes.

23 Q In fact, did the waiver request not

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1 reference and to some extent rely upon those
2 materials?

3 A Yes, it did.

4 Q And did you understand at the time of
5 the preparation and filing of the waiver request
6 that those documents were true and accurate for
7 what they purported to represent?

8 A That was my understanding and belief,
9 yes, at the time.

10 Q And that was in part premised on your
11 understanding and your conversation with the
12 Federal Communications Commission and the
13 Federal Communication Commission's
14 acknowledgement that those documents were not,
15 in fact, printouts of the computer files
16 actually transmitted to the FCC?

17 A I'm not sure I can exactly say what
18 they understood. And I'm not sure in how much
19 detail I conveyed that information. But it is
20 my recollection that I indicated to the FCC that
21 this was a spreadsheet printout that had been
22 updated after going off line to reflect the on
23 line changes. They indicated that it was their

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1 understanding that this was a file that was not
2 a representation of what was transmitted.

3 Q And that was, again, reflected in the
4 waiver request where it was referred to as
5 reflecting what they believed they had
6 submitted?

7 A Yes.

8 Q "They" being PCS 2000?

9 A Yes.



FEDERAL COMMUNICATIONS COMMISSION

In re Applications of)	WT Docket No. 97-199
)	
WESTEL SAMOA, INC.)	File No. 00560-CW-L-96
)	
For Broadband Block C Personal)	
Communications Systems Facilities)	
)	
and)	
)	
WESTEL, L.P.)	
)	
For Broadband Block C Personal)	File Nos. 00129-CW-L-97
Communications Systems Facilities)	00862-CW-L-97
)	00863-CW-L-97
)	00864-CW-L-97
)	00865-CW-L-97
)	00866-CW-L-97
)	

Deposition of Anthony Terry Easton

Pages: 1 through 98
Place: Washington, D.C.
Date: December 9, 1997

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1 our clients and made them aware of the possibility of
2 participating in the upcoming auctions.

3 Q And what was the name of the venture that was
4 eventually put together?

5 A It was a limited partnership in Delaware called
6 PCS 2000, L.P.

7 Q And who is the general partner of this limited
8 partnership?

9 A A reconstituted Unicom Corporation. By that, I
10 mean the original officers, directors, and shareholders and
11 purpose of the business were redirected to that purpose, and
12 Unicom ceased to be involved with the Russian Development
13 projects.

14 Q Was Romulus Telecommunications, Inc., in any way
15 involved with PCS 2000, L.P.?

16 A Romulus Telecommunications, Inc., has a
17 contractual agreement with Unicom Corporation, the general
18 partner of PCS 2000, to provide analysis engineering and
19 bidding services to the partnership to the general partner.
20 I think that agreement was entered into in roughly the same
21 time frame.

22 Q Are you aware of a business entity under the name,
23 San Mateo Group?

1 A Yes, sir.

2 Q Was San Mateo Group at all involved with PCS 2000?

3 A Yes, it was.

4 Q How so?

5 A San Mateo Group is a corporation, and it's based
6 in San Mateo, California, and it is a corporation which held
7 a contract with Romulus Telecommunications to provide the
8 actual computer technology and bidding system, the physical
9 facilities at which bidding would be taking place and the
10 analysis of the competitors and so forth in the upcoming
11 auction.

12 Q What was the ownership of San Mateo Group?

13 A San Mateo Group is Sub-S Corporation, owned by
14 myself.

15 Q Is it still in existence?

16 A It is.

17 Q Mr. Breen had no ownership in San Mateo Group.

18 A That's correct.

19 Q Is Mr. Breen an officer or director of San Mateo
20 Group?

21 A I don't think so.

22 Q I'd like to direct your attention now to the
23 events of January 11 -- I'm sorry -- January 23, 1996.

1 specific about that bid. So we can save a lot of time by --

2 MR. WEBER: I understand, but if I'm going to file
3 a motion to compel, there has to be a question on the
4 record.

5 MR. LUKAS: I'm going to say the same objection.

6 MR. WEBER: I understand that.

7 BY MR. WEBER:

8 Q Did you contact Mr. Breen on January -- again,
9 this will be without foundation -- on January 23rd after a
10 bidding error was discovered?

11 A Yes, I did. Yes, sir.

12 Q Mr. Breen was not in the office on that day?

13 A That's correct.

14 Q Where was Mr. Breen on January 23rd?

15 A There had been a snow storm in Oregon, quite a
16 severe snow storm, and so he was unable to travel to
17 California by car. So he was in Oregon in his house, his
18 office. At that time, he lived in Oregon.

19 Q He was in his house and not on the road driving to
20 California at the time an error was discovered.

21 A I believe he probably was in his car when the
22 error had been discovered. I had talked to him earlier when
23 he was still in his house, so I think you're correct.

1 Q Did you contact him more than once that day
2 regarding the bidding error?

3 A I believe I contacted him -- we talked, I think,
4 several times.

5 Q Can you recall approximately at what time you
6 called him for the first time?

7 A I'm not sure whether I called him or he called me,
8 but I think the first time we talked was -- I think it was
9 early afternoon. I'm not certain of that, but I believe
10 that's correct.

11 Q Can you recall approximately how long that phone
12 call lasted?

13 A No, sir. Probably -- I'd be guessing, but I'll
14 take a guess, if you like -- probably five minutes,
15 something like that. The road system between Oregon and San
16 Francisco through the mountains does not have very good
17 cellular service, or at least it didn't at that point. So
18 it was usually pretty difficult to maintain a call for more
19 than a few minutes, if at all.

20 Q What did you tell Mr. Breen about the bidding
21 error?

22 A That an error had occurred, that we were trying to
23 figure out what the problem was, and I believe I had also

1 said -- I'm not sure if in that conversation I said, but
2 probably, that we had sent some materials to the FCC
3 Computer Center, the contract computer people, to try to
4 figure out, unravel where the problem was. And I told him I
5 think that I had also contacted Michael Sullivan and asked
6 him to contact the Commission. I think actually I talked to
7 Michael at length later in the day, and perhaps I reached
8 him for just a short time. I'm not sure quite of the timing
9 because I had another conversation, I believe, with Mr.
10 Breen later in the afternoon.

11 Q How long after the discovery of the bidding error
12 did you contact Mr. Breen?

13 A How long after were we successful in reaching Mr.
14 Breen? I don't know, but some time passed, because he
15 wasn't able to be reached easily. I don't think that we
16 reached him. I know that he called us the first time. I
17 don't think we were able to reach him in the mountains.

18 Q Not to characterize your testimony, but just to be
19 sure I understand, --

20 A Yes, sir.

21 Q -- is it your testimony, then, that you attempted
22 to contact Mr. Breen but were unable to reach him prior to
23 actually speaking to him?

1 A Yes, sir.

2 Q Now, you stated that you told him that an error
3 had occurred. To the best of your recollection, what
4 specifically did you tell him?

5 A I think I indicated what I just said. That was
6 the nature of the conversation.

7 Q Well, I mean, more specific than the nature of the
8 conversation, if you can recall.

9 A I think I've exhausted my description on that, the
10 conversation. I said what I had just indicated to you that
11 I said.

12 Q Did you give him any theory as to how the error
13 occurred?

14 A I don't think I said anything about theories at
15 that point. It was too new. I was still trying to collect
16 data to try to analyze what had happened.

17 Q You stated you may have told him that you sent
18 some materials to the FCC. Did you tell him what the nature
19 of these materials was?

20 A I think that I said to him that I had what I
21 thought was the best reconstruction of what the bid actually
22 was that I faxed to the Commission, or actually it wasn't --
23 I didn't fax it; it was faxed by one of our temps, but it

1 didn't go to the Commission; it went to the FCC Computer
2 Center, and I told him that I had sent the computer people.

3 Q What do you mean by "the best reconstruction"?

4 A Well, I sent a copy of a screen snapshot that was
5 on my computer.

6 Q Did Mr. Breen ask about what you had sent to the
7 FCC?

8 A Not at that point. I think it was fairly hard to
9 hear in that conversation.

10 Q Did you discuss with Mr. Breen the significance of
11 the bidding error?

12 A No, not in that conversation, no, sir.

13 Q Do you believe Mr. Breen was aware of the
14 significance of the bidding error?

15 A I can't put myself into Mr. Breen's thoughts. It
16 would just be conjecture.

17 MR. WEBER: Can I have this marked as Easton
18 Exhibit 2. And for the record it's a three-page document
19 with Bates numbers at the bottom 2-00471 through 473. And I
20 will tell you this is a document that the Bureau received
21 from subpoenas sent out earlier in the year, or actually
22 last year, on PCS 2000, and these are Mr. Breen's cellular
23 phone records.

1 Q Did you meet with Mr. Breen later that day?

2 A I don't recall whether we met or not. I know we
3 had meetings the next morning, and for some reason I think
4 we may have gotten together briefly, but I don't have a
5 clear memory.

6 Q In either of these telephone conversations, did
7 you tell Mr. Breen whether you had spoken to the FCC
8 already?

9 A I think I did.

10 Q Can you recall what you told him about speaking to
11 the FCC?

12 A Well, I didn't tell him I had spoken with the FCC;
13 I told him that I talked to the FCC Computer Center, and
14 that was part of the original conversation, I believe, where
15 I told him that I had sent the computer center some
16 material, as I originally commented.

17 Q Did you go into any detail about what you told the
18 FCC Computer Center?

19 A I don't recall that I did.

20 Q Did you tell Mr. Breen in either of these
21 conversations that you believe your records reflect an \$18
22 million bid for that market?

23 A It would have made sense, but I don't recall that

1 precise conversation.

2 Q Do you recall if he asked what your records
3 reflect?

4 A I don't. But, again, the same provision: It
5 would have made sense for us to have had that conversation;
6 I just don't recall it.

7 Q And are you saying that it would have made sense
8 for that conversation to occur because at that time you
9 believed your records reflect an \$18 million bid?

10 A No. It's simply that there was a discrepancy
11 between the records.

12 Q Okay. You testified that you don't recall if the
13 topic of the bid-withdrawal payment was raised on January
14 23rd in either of these telephone calls. Can you recall if
15 it ever was raised in discussions with Mr. Breen?

16 A We had conversations from the 24th onward for a
17 number of days, and both independently and with our counsel,
18 and that topic did come up.

19 Q And what was said about it?

20 A Well, I think the issue was for us to get filed as
21 quickly as we could with the FCC a formal withdrawal request
22 indicating that a mistake had been made. It clearly was on
23 our side. We didn't know where or how the combination

1 mistake was made, but since there wasn't any intent to
2 purposely overbid by \$160 million or so, we weren't trying
3 to -- I think the Commission somewhere said "game the
4 system" in one of the seminars we went to -- we weren't
5 trying to play any games with the bidding system; it was an
6 innocent mistake -- that the Commission would ultimately
7 waive any withdrawal payments or establish a much lower
8 scale. That had been submitted to the Commission by our
9 counsel.

10 Q Was the potential amount for the bid-withdrawal
11 payment discussed with Mr. Breen?

12 A The potential amount for the bid-withdrawal
13 payment.

14 Q Meaning if nothing was waived, if the FCC did
15 not -- you just discussed filing a waiver request.

16 A Right.

17 Q And was a potential amount that PCS 2000 was
18 facing discussed with Mr. Breen?

19 A Yes, I think so. Nobody thought or believed that
20 the FCC would apply a bid payment or a penalty in the amount
21 of \$160 million. It's just an absurd thought. We thought
22 that the Commission would probably -- there were two schools
23 of thought here. One was that the Commission would simply

1 waive any penalty because it wasn't something that we were
2 intentionally doing, so it didn't fit within the rules of
3 why the penalties were established. And then another
4 school, and I think that was Mr. Sullivan's position, was
5 that we needed to offer the Commission something in good
6 faith, and I think he said something like \$100,000.

7 There were companies that had added three zeros,
8 getting \$300 million instead of \$300,000. If one had added
9 six zeros, it would have been a billion, nine zeros, a
10 billion dollars. It's just absurd. You could have created
11 an error which was greater than the gross national product
12 of the country. The government clearly couldn't have fined
13 us more than the money in the Federal Reserve Banks, so it
14 wasn't a serious issue.

15 Q Are you saying, then, that there wasn't great
16 concern over the bid-withdrawal payment?

17 A No, I wouldn't say that. It's that simply once we
18 had talked to Mr. Sullivan and turned this over to counsel.
19 By that evening, by around -- I think I had a conversation
20 with Mike around three, three-thirty, something like that.
21 It was a lengthy conversation, a long conversation, and at
22 that point, by that time, he had taken over the process.

23 He had known that I had contacted the computer

1 center to try to figure out if they could help coordinate,
2 figure out where the error occurred on their side. He took
3 over the whole process and was filing a withdrawal, and it
4 was no longer in our hands.

5 Q And this lengthy conversation; was that January
6 23rd?

7 A Yes, sir. So, on January 24th, talking with Mr.
8 Breen and Mr. Sullivan and others, it was a serious matter,
9 but we were led to believe by our counsel that it would be
10 resolved in a few weeks.

11 Q And you conveyed Mr. Sullivan's information to Mr.
12 Breen.

13 A Mr. Breen had direct conversations with Mr.
14 Sullivan.

15 Q You stated there were essentially two schools of
16 thought about how the Commission would react or of how to
17 proceed.

18 A Yes, sir.

19 Q Do you know which of the two schools of thought
20 Mr. Breen fell into?

21 A Yes, sir.

22 Q Which one?

23 A Not one penny.

1 Q And what specifically did Mr. Breen say? And what
2 specifically did Mr. Breen say, I mean, that would lead you
3 to believe he was in that school of thought?

4 A Well, his feeling was it was an innocent mistake,
5 it wasn't purposely done, and that the Commission was a just
6 and a fair organization; and, therefore, even though the
7 rules did not allow for a withdrawal at that point, without
8 paying an absurd penalty for this kind -- this hadn't been
9 considered by the FCC, as we subsequently found out months
10 later when the FCC retroactively changed the rules, I guess.
11 It was a concern, but he felt that it shouldn't -- I think
12 he was in a position that we shouldn't pay anything.

13 Q And this was conveyed to you on the 24th of
14 January.

15 A I don't know if it was the 24th or the 25th, but
16 in that time frame.

17 Q It's true that there was a board meeting on
18 January 27th -- correct? --

19 A Yes, sir.

20 Q -- of Unicom Corporation. Did Mr. Breen maintain
21 that same school of thought at that time at that board
22 meeting?

23 A I don't recall Mr. Breen saying much at that board

1 meeting.

2 Q Did he say anything which indicated he had changed
3 his school of thought?

4 A I just don't recall there being much conversation
5 Mr. Breen had on any subject at that meeting.

6 Q Did you have any discussions with Mr. Breen at any
7 point after those initial two phone calls on January 23rd in
8 which the topic of whether or not Romulus Telecommunications
9 could be held accountable for whatever payment penalty PCS
10 2000 may pay for the bidding error?

11 A Yes, sir.

12 Q What was Mr. Breen's thought on that?

13 A That wasn't an issue.

14 Q Meaning?

15 A There were two reasons. One is that there
16 wouldn't be a penalty or a payment, as you've indicated it's
17 called. I didn't know that, by the way. I thought it was
18 called "penalty." It felt like a penalty.

19 There was a position, first of all, that it
20 wouldn't apply; and, second, Romulus Telecommunications,
21 Inc., had a contract with Unicom Corporation where it
22 assumed that we could make lots of mistakes, and everything
23 that could go wrong could go wrong. We could bid too much